

DOWD, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Michael Masters	)	
	)	CASE NO. 5:07 CV 1826
Plaintiff,	)	
	)	
v.	)	<u>MEMORANDUM OPINION AND</u>
Supplemental Executive Retirement Plan for	)	<u>ORDER</u>
Automated Packaging Systems, Inc., <i>et al.</i> ,	)	(Resolving Doc. 30)
	)	
Defendants.	)	
	)	

Pursuant to 29 U.S.C. § 1132(g)(1), plaintiff seeks by application an award of attorney fees in this ERISA case in which the plaintiff prevailed. *See* Doc. 30. Defendants opposed plaintiff's application for attorney fees and costs. Doc. 32.

Plaintiff's application seeks \$106,637.50 in fees associated with the original administrative phase of the case during which the plaintiff's claim was denied. While it seems to the Court to be counterintuitive, *Anderson v. Procter & Gamble*, 220 F.3d 449 (6th Cir. 2000), makes it clear that a party cannot recover costs or attorney fees associated with a pre-litigation ERISA administrative proceeding.

Plaintiff also seeks an award of \$58,893 in litigation phase fees and \$4,136.12 in litigation phase costs. Defendants contend that the Court should deny the application after applying the test set forth in *Secretary of the Department of Labor v. King* 775 F.2d 666 (6th Cir. 1985), or at best, make an award of only 19.74% of the requested amount of attorney fees because of the limited success plaintiff achieved in this action. *See* Defendants' Brief in Opposition, Doc. 32, p. 11 of 25, fn 2.

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The Court agrees with the defendants' analysis after applying the teachings of *King*. Accordingly, the Court awards plaintiff attorney fees in the amount of \$11,625.40 and costs in amount of \$4,136.12, for a total sum of \$15,761.52. Defendants are ordered to pay plaintiff the sum of \$15,761.52 within thirty (30) days of this Memorandum Opinion and Order.

IT IS SO ORDERED.

May 1, 2009  
Date

S/ David D. Dowd, Jr.  
David D. Dowd, Jr.  
U.S. District Judge